

Message

From: Holst, Linda [holst.linda@epa.gov]
Sent: 4/25/2016 10:41:10 PM
To: Johnson, Aaron [Johnson.AaronK@epa.gov]
Subject: Fwd: MPCA Proposed Antidegradation Rules
Attachments: WaterLegacyComment_MPCAProposedAntidegradationRules(3-23-16).pdf; ATT00001.htm; WaterLegacyPost-HearingAntidegradationComments(4-20-16).pdf; ATT00002.htm; MCEAAntidegradationComments(March2016).pdf; ATT00003.htm; 2016-4-20 MCEA Post Hearing Comments.pdf; ATT00004.htm

FYI

Linda

Begin forwarded message:

From: Paula Maccabee <pmaccabee@justchangelaw.com>
Date: April 25, 2016 at 2:10:23 PM CDT
To: Linda Holst <Holst.Linda@epamail.epa.gov>, Barbara Wester <wester.barbara@epa.gov>, David Pfeifer <Pfeifer.David@epa.gov>, Krista McKim <mckim.krista@epa.gov>
Cc: Betsy Lawton <blawton@mncenter.org>
Subject: MPCA Proposed Antidegradation Rules

Dear Linda, Barbara, David, Krista:

WaterLegacy has expressed concern about the Minnesota Pollution Control Agency (MPCA) proposed Antidegradation Rules. These rules are convoluted in their drafting, and we found many provisions that were inconsistent with federal requirements. Since we submitted our pre-hearing comments and testimony, the MPCA has proposed several changes in the antidegradation rules that respond to some of the issues in our comments. Other issues, including concerns about opaque and unworkable procedures, have yet to be addressed.

Perhaps of greatest concern, none of the MPCA's proposed changes address the fact that the fundamental effect of the MPCA's proposed rule structure and definitions of "degradation," "net increases in loading," "existing" water quality, and the "effective date" of the provisions would be to exempt significant expanded discharge from existing facilities – both municipal and industrial – from any antidegradation review. WaterLegacy's and MCEA's post-hearing comments both focus on this concern. WaterLegacy believes that the exemption of significant actual degradation of water quality resulting from mining and other industrial activities from review by defining degradation out of existence is contrary to federal law as well as contrary to the asserted purpose of the MPCA's rulemaking. Although less obvious than Minnesota's current threshold (Minn. R. 7050.0185, Subp. 2, Item G) below which no anti degradation review need take place, the proposed rules would allow actual degradation of high water quality without any alternatives review far beyond a *de minimis* level.

With this email, I have attached the pre-hearing and post-hearing comments of WaterLegacy and Minnesota Center for Environmental Advocacy (MCEA). The MPCA's proposed rules and post-hearing responses to comments and proposed changes can be found at <https://www.pca.state.mn.us/water/nondegradation-rulemaking>.

I would greatly appreciate a chance to discuss our remaining concerns with U.S. Environmental Protection Agency staff once you have had a chance to review the proposed rules in light of the

concerns we and MCEA have raised about their implications. Please let me know when that discussion might be scheduled.

I look forward to hearing from you.

Best regards,
Paula

Paula Maccabee, Esq.
JUST CHANGE LAW OFFICES
1961 Selby Ave.
St. Paul MN 55104
phone: 651-646-8890
fax: 651-646-5754
Cell: 651-775-7128
e-mail: pmaccabee@justchangelaw.com
<http://www.justchangelaw.com>

Advocacy Director/Counsel for WaterLegacy